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**From:**

**Sent:** Monday, November 16, 2009 3:31:07 PM


**To:**

**Cc:**

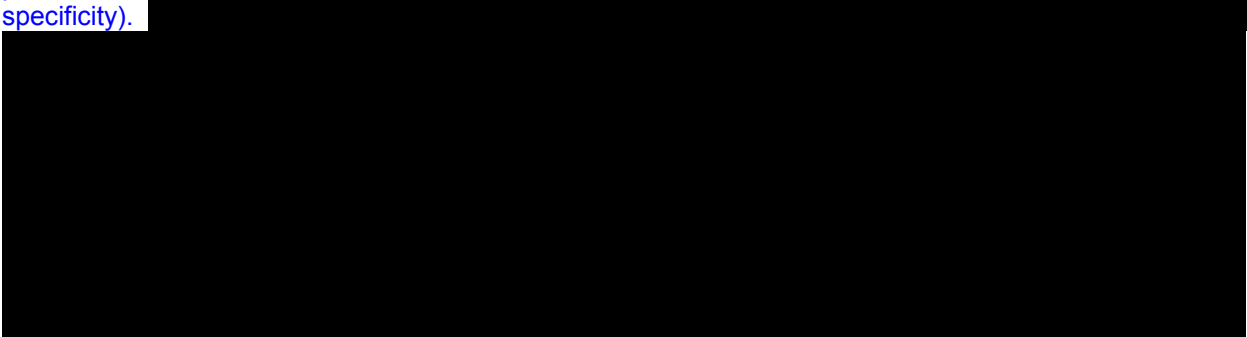
**Subject:** Protective Refund Claims -

Your inquiry regarding protective claims for refund touches upon several issues. The first of which concerns the amount of the refund claimed. Specifically, you asked whether an ostensible protective claim would be processable if it were processed with a TC 290 for \$0. The concept of a protective claim being sufficient to hold open the RSED until later amendment by a formal claim is established by case law. See United States v. Kales, 314 U.S. 186 (1941). Generally, the claim: (1) must have a written component; (2) must identify and describe the contingencies affecting the claim; (3) must be sufficiently clear and definite to alert the Service as to the essential nature of the claim; and (4) must identify a specific year or years for which a refund is sought. As we discussed, Counsel has had occasion to address the sufficiency of a protective claim that failed to put the Commissioner on notice of the amount (reasonably expected upper bound) of the claim and explicitly has interpreted the case law to make clear that a valid protective claim need not state a particular dollar amount. Accordingly, such a defect alone might not be grounds to treat a protective claim as not processable.

In particular, you are reviewing ostensible protective claims that identify the grounds as being , but that otherwise provide little information to apprise the Commissioner of the nature of the claim. For example, some of the claims do not indicate whether the taxpayer intends to claim a theft loss, remove income, or claim a deduction pursuant to the method discussed in Revenue Procedure 2009-20 (which provides a safe harbor that qualified taxpayers may use to determine the amount of a Ponzi-type scheme theft loss for a covered "discovery year"). Based on our conversations, we agreed that the dispute is one of internal processes as opposed to legal interpretation. All protective claims meet CAT-A criteria. IRM 21.5.3.4.7.3(2).



Currently, there is no published guidance that describes the specific criteria for a protective claim to be processable by the Service (beyond requiring that the grounds for the claim be described with specificity).



[REDACTED]

[REDACTED]

[REDACTED]

Feel free to call me directly if you have any questions or wish to discuss this matter further.

Regards,